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Philips Intellectual Property & Standards  
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MAR 28 2005

In re Application of:	:	
William J. Ossmann	:	DECISION ON PETITION TO
Serial No.: 09/919,232	:	WITHDRAW THE HOLDING
Filed: July 31, 2001	:	OF ABANDONMENT
Attorney Docket No.: US010394	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed on November 17, 2003. There is no fee for this petition.

The petition is **GRANTED**.

A final Office action was mailed on August 21, 2002. An after-final amendment was filed on October 30, 2002. An advisory action was mailed on November 7, 2002 indicating that the after-final amendment failed to place the application in condition for allowance. A Notice of Abandonment was mailed on October 27, 2003. Although the Notice of Abandonment indicates that the application was abandoned in view of applicant's failure to timely file a proper reply to the Office letter mailed on November 7, 2002, it was actually held abandoned for failure to timely file a proper reply to the final Office action mailed on August 21, 2002.

A proper reply to a final rejection under 37 C.F.R. § 1.113 may only be either (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 C.F.R. § 1.114.

Petitioner asserts that a Request for Continued Examination (RCE) and Petition for Extension of Time (EOT) were timely filed in the United States Patent and Trademark Office (USPTO) on January 14, 2003. To support this assertion, petitioner has submitted copies of the RCE and EOT and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the RCE and EOT by the USPTO on January 14, 2003.


A review of the application file record reveals that the RCE and EOT having been acknowledged as being received in the USPTO on January 14, 2003 are not of record in the application file and cannot be located. On the other hand, Office records indicate that a 2 month extension of time fee was charged to applicant's Deposit Account on January 15, 2003

in connection with a paper filed on January 14, 2003. In any case, M.P.E.P. § 503 states that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. Accordingly, it is concluded that the RCE and EOT were timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed October 27, 2003 is hereby **VACATED** and the holding of abandonment is withdrawn.

The RCE filed with the petition on November 17, 2003 will be processed by the Technology Center 2800 support staff and the examiner will be prepare an Office action considering the after-final amendment/reply filed on October 30, 2002 as requested in the RCE.

Any inquiries regarding this decision should be directed to Special Programs Examiner Edward Westin at (571) 272-1638.



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Richard K. Seidel, Director  
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Systems and Components